

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN RIC HOLDEN**, on March 19, 2001 at 3:00 A.M., in Room 422, Capitol.

ROLL CALL

Members Present:

Sen. Ric Holden, Chairman (R)
Sen. Pete Ekegren, Vice Chairman (R)
Sen. Mike Halligan (D)
Sen. Greg Jergeson (D)
Sen. Walter McNutt (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Tom Zook (R)

Members Excused: Sen. Arnie Mohl (R)

Members Absent: None.

Staff Present: Laramie Cumley, Committee Secretary
Doug Sternberg, Legislative Services

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 33 & HB 418 2/2/01
Executive Action: HB 418, HB 33

HEARING ON HB 33

Sponsor: REP. CINDY YOUNKIN, HD 28, BOZEMAN

Proponents: Michael Kakuk,
Jack Stults, Montana Department of Natural Resources
and Conservation
Patrick Heffernan, Montana Logging Association

Mike Murphy, Montana Water Resource Association
Ellen Engstedt, Montana Wood Products Association
John Semple, Montana Cattlemens Association
Gordon Morris, Montana Association of Counties

Opponents: none

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, BOZEMAN, opened HB 33 explaining the contents of the bill and the process in which a temporary water use permit undergoes in order for a construction company to control dust, compaction or any other road construction.

Proponents' Testimony:

Michael Kakuk stated people illegally use water and they are not complying with the water use act. He discussed a cap on the amount of water that may be used per day or per project with reasonable limits for temporary use.

Jack Stults explained safeguards on the limits stated in the bill. He discussed the benefits of the public, as well as possible damages. He expressed concern with the shortage of water in upcoming years and how the bill would change the habits of the people who are not adhering to water laws, practices and procedures.

Patrick Heffernan explained logging operations presently go through the process of obtaining a temporary water right permit to control dust on dirt roads. He expressed support for the bill.

Mike Murphy stood in support of the bill.

Ellen Engstedt presented written testimony. **EXHIBIT (ags62a01)**

John Semple stood in support of the bill.

Gordon Morris also supported the bill.

Opponents' Testimony: none

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN questioned language referring to leasing water rights. If a complaint was made, the right would be discontinued, if it was found to be of malicious intent. He said it seemed, a

right is being given and taken away. He asked if a misdemeanor penalty is too severe.

Jack Stults stated it does seem harsh but, the language is such that it would have to be fully obvious malicious intent to be a misdemeanor.

SEN. HALLIGAN asked **Mr. Stults** to explain the process of the department.

Mr. Stults stated if there was a complaint regarding a senior water right being effected the department would investigate and within 24 to 48 hours the operation would be stopped. If it was found that the diversion of a road construction crew was not effecting the water right holder, the operation would reconvene.

SEN. TOM ZOOK asked if the same process would be followed in an area where there is no irrigation, there are reservoirs.

REP. YOUNKIN stated the process would need to be followed by the county road crew.

SEN. HALLIGAN referred to the bottom of page 2. He stated not everyone is a lessee.

Jack Stults stated in the bill, everyone is a lessee. The contractors are lessees.

SEN. ZOOK asked if fire trucks could appropriate water anywhere, anytime.

Jack Stults stated yes, they can. He said there are statutes referring to emergencies.

Closing by Sponsor:

REP. YOUNKIN stated the intent of the bill is to create a user friendly process for short term water right lessees for dust abatement and road construction. She said the bill will help to prevent people from stealing water.

SEN. Holden noted he will carry the bill on the floor.

HEARING ON HB 418

Sponsor: REP. CINDY YOUNKIN, HD 28, BOZEMAN

Proponents: Gordon Morris, Montana Association of Counties
John Semple, Montana Cattlemomens Association,
Montana Stockgrowers Association

Opponents: none

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, BOZEMAN stated the intent of the bill is to change the petition requirement from all effected landowners, to 55% of landowners effected by an annexation. The reason for the change is to have consistency with the creation of a herd district. She also addressed who must build and maintain fences in a herd district.

Proponents' Testimony:

Gordon Morris stood in support of the bill.

John Semple also supported the bill.

Opponents' Testimony: none

Questions from Committee Members and Responses:

SEN. COREY STAPLETON referred to line 15. He asked if someone comes along and annexed into a herd district, could they suppose the entities who originally created the herd district would be obligated to build the fence. He suggested language which stated, "must be constructed by anyone who is being annexed". The herd district is equally responsible.

REP. YOUNKIN stated the responsibility to build fence is up to the person annexing into the herd district. She stated her intent was to clarify these questions. The existing law states when a person stands in the middle of a field, they are responsible for fencing to the right.

SEN. ZOOK stated it is a fairness issue.

SEN. LINDA NELSON questioned present law regarding open range and the responsibility to fence people's cattle out. She clarified if a herd district has been formed someone would have to fence their cattle out of the herd district. She asked if the bill would make her fence either way.

REP. YOUNKIN stated no, only if she was creating a new herd district or if she were to annex into the current herd district. She also stated this issue is not clear.

SEN. HALLIGAN suggested new language which would clarify the intent of the bill by stating, "by the entities requesting annexation into the herd district."

REP. YOUNKIN stated she had no problems with the suggestion.

SEN. HALLIGAN asked if 40% of the people involved in creating a herd district do not sign the petition, and 55% do, does the 40% have to help pay to build the fence.

REP. YOUNKIN answered, yes.

SEN. HALLIGAN questioned the word possessor and the reasons for usage in the drafting of the bill.

REP. YOUNKIN stated the word possessor was used for consistency with current statues on the creation of a herd district.

SEN. NELSON questioned 70-16-205.

REP. YOUNKIN stated the statute describes persons fencing to the right.

SEN. STAPLETON referred to, and questioned language on line 23. He asked if someone owned 55% of the land, would they have the controlling vote.

REP. YOUNKIN answered, yes.

SEN. STAPLETON questioned the change of ownership of land.

REP. YOUNKIN stated ownership of land may be changed several times and the person would remain in the herd district. If someone wanted out of the herd district, a petition would need to be filed.

Closing by Sponsor:

REP. YOUNKIN respectfully closed the hearing on HB 418.

EXECUTIVE ACTION ON HB 418

SEN. HOLDEN stated he liked the idea of sharing the obligation of building fences jointly.

SEN. ZOOK said, he agreed with fencing to the right because it solves a lot of disputes. He said he thinks if someone had to

fence his cattle out, that would be wrong and unfair. The initiators of the action should be responsible.

SEN. HOLDEN stated people are going to move into the herd districts later and think that they do not have an obligation to share on any of the building.

SEN. ZOOK stated that is wrong, it should not be that way; it is their choice and their responsibility.

Doug Sternberg explained the details of the bill. He suggested language saying, "upon creation of a herd district, fences must be constructed by the entities creating the herd district. Upon approving an annexation to an existing herd district, fences must be constructed by the entity being annexed into the herd district. In both cases, fences must be maintained to the right."

SEN. HOLDEN questioned the length of maintenance on fences.

SEN. NELSON stated the bill would undo the cattle owners obligations to fence in their cattle.

SEN. HOLDEN stated the bill would be discussed at a later date in order for the proposed amendments to be prepared and understood by the committee. HB 418 was discussed further on 3/23/01.

EXECUTIVE ACTION ON HB 33

Motion: **SEN. HALLIGAN** moved that **AMENDMENT HB003301.ADS BE ADOPTED.**

Discussion:

Doug Sternberg explained the amendment **HB003301.ads** regarding a 30 day notice of a temporary water use permit. **EXHIBIT (ags62a02)**

Vote: Motion **carried unanimously.**

Motion: **SEN. HALLIGAN** moved that **HB 33 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HOLDEN referred to page 2, line 23, and stated if there is an interest in the water and the effects, someone with a water right should not get a fine for calling the department.

SEN. HALLIGAN stated a purpose must be shown, including malicious intent. He suggested striking sub section 6.

SEN. ZOOK stated there is nothing malicious about calling the department if it is felt that someone's full allotment of water was not being received.

SEN. WALT MCNUTT said someone would really have to go out of their way to cause problems.

SEN. GERALD PEASE asked what the actual cost of loss of production would be for a road construction company if the department shut them down for 24 to 48 hours.

Vote: Motion **carried unanimously.**

SEN. HOLDEN noted he would carry the bill on the floor.

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. RIC HOLDEN, Chairman

LARAMIE CUMLEY, Secretary

RH/LC

EXHIBIT (ags62aad)